

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GUILLERMO MALDONADO)
)
 v.) C.A. No. 02-335L
)
 UNITED STATES OF AMERICA)

MEMORANDUM AND ORDER

This is petitioner's motion pursuant to Fed.R.Civ.P. 60(b) to vacate this Court's Order entered on November 8, 2002, denying his petition to vacate his sentence which was filed pursuant to 28 U.S.C. § 2255.

This is the fifth in a series of post conviction attacks that petitioner has launched on his sentence of 210 months of incarceration which was imposed on October 8, 2001.

There are four obvious reasons why this latest motion lacks merit.

First of all, it is clear in this Circuit that a defendant who uses a 2255 petition to restore his right to appeal must raise all available claims in that first petition. In this case, petitioner restricted his first 2255 petition to restoration of his right of appeal to the Circuit. Later, he mounted an attack on the sentence using 2255 again and, therefore, that later petition was a second or successive petition.

Secondly, the First Circuit has already ruled in this case that the latter petition was a successive petition.

Thirdly, this motion is tardy under Rule 60(b) because petitioner waited more than two and one-half years to pursue this matter.

Fourthly, the judgment entered for the United States on November 8, 2002 by this Court cannot be vacated because, clearly, that 2255 petition was a successive petition and, in addition, petitioner's claims for vacation of his sentence were denied on the merits.

For all those reasons, this motion hereby is denied.
It is so ordered.

Ronald R. Lagueux
Ronald R. Lagueux
Senior Judge
September 15, 2005